

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

J&J CLASS 1

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS COUNSEL'S RESPONSE TO THE J&J DEFENDANTS' MOTION
CHALLENGING PLAINTIFFS' PROPOSED CLASS REPRESENTATIVE**

Class Counsel respectfully submit the following response to the J&J Defendants' Motion Challenging Plaintiffs' Proposed Class Representative (Dkt. No. 7259).

On June 21, 2010, after Class Counsel sought sanctions against Don Haviland for withdrawing the former Class 1 Representatives against the Johnson & Johnson Defendants four-and-a-half years after those clients were added to the Complaint in this action, this Court entered an order denying Plaintiffs' Motion. That order found that "[w]hile the timing of the Motion to Withdraw is troublesome, there is no prejudice to the Class as the court gave class counsel time to find new class representatives."

Plaintiffs did come forward with a new proposed class representative, Mrs. Jimmie Oustad. As Plaintiffs previously stated, and as her medical records indicate, Mrs. Oustad has received Remicade for several years, has been a Medicare Part B beneficiary and has been charged and paid percentage co-payments for her Remicade. *See* Dkt. No. 7130. However, because of the significant amount of time that has elapsed since Mrs. Oustad began taking the drug, Class Counsel have been unable to locate written records demonstrating that Mrs. Oustad

took Remicade prior to May 2004. No other potentially viable class representatives for the J&J class have stepped forward.

DATED: October 15, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, *Class Counsel's Response to the J&J Defendants' Motion Challenging Plaintiffs' Proposed Class Representative* to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on October 15, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman
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